

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2488 of 1988

with

SPECIAL CIVIL APPLICATION No 2489 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANANDVIHAR CO.OP HSG.SOCIETY

Versus

D S SOLANKI

Appearance:

1. Special Civil Application No. 2488 of 1988
MR AD MITHANI for Petitioner
MR SK JHAVERI for Respondent No. 1
MS SIDDHI TALATI for Respondents No. 2, 3, 4
2. Special Civil Application No 2489 of 1988
MR AD MITHANI for Petitioner
MR SK JHAVERI for Respondent No. 1
MS SIDDHI TALATI for Respondents No. 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/10/97

C.A.V. JUDGEMENT

1. As in both these matters, identical issues have been raised, the same are being taken up for hearing together with the consent of the counsel for the parties and are being disposed of by this common order.

2. The facts of the case are taken from the special civil application No.2488/88.

3. These petitions have been filed by Anandvihar Cooperative Housing Society Ltd. against its members the respondent No.1 in both these petitions and challenge has been made to the order dated 21st October, 1982 of the District Registrar, Cooperative Societies and the orders of the appellate authorities, the Registrar and the Government under the appeals by the petitioner against the said order.

4. The petitioner-Society has taken a resolution as alleged in these petitions under which the respondents No.1 in both these petitions were ordered to be expelled from the membership of the Society on the alleged ground of irregularity in the payment of dues of the Society, non-submission of some of the vouchers and made-up of some receipts of payment. The District Registrar of the City of Ahmedabad under its order dated 21st October, 1982 disapproved the aforesaid resolution of the Society expelling thereunder the respondent No.1 in both these petitions as its members. The First Appeals filed by the Society before the Registrar has been dismissed under the common order dated 27th October, 1986 and the matter was further taken up in Second Appeal in revision before the Government which also came to be dismissed by the Government under the order dated 30th March, 1988. Hence, these special civil applications.

5. The learned counsel for the petitioners contended that all the three authorities have exceeded their jurisdiction in interfering in the matter. The resolution which has been passed by the Society of expelling the respondent No.1 in both these petitions from its membership stood deemed approved by the District Registrar of the Cooperative Societies as the said authority has not passed the order of approval or disapproval within stipulated period as provided in section 36 of the Gujarat Cooperative Societies Act. It has next been contended that the respondent No.1 members of the society have committed irregularities, and as such, the Society has not committed any error in

expelling them from its membership.

6. On the other hand, the counsel for the respondent contended that all the three authorities concurrently decided the matter against the petitioner-Society, and as such, this Court sitting under Article 226 of the Constitution of India may not interfere with those orders. It has next been contended that on hyper-technical grounds, the Society has expelled the respondents No.1, in both these petitions from its membership. The respondents have paid all the due installments in time and only with the object to favour other persons, the Society has launched a campaign of expulsion of these persons from its membership.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. Section 36 of the Act aforesaid provides that a Society may, by resolution passed by 3/4th majority of all the members present and voting at the General meeting of the members held for the purpose, expel a member for acts which are detrimental to the proper working of the Society. This section further provides that no resolution of the aforesaid character shall be valid unless the member concerned is given an opportunity of representing his case to the General Body and no resolution shall be effective unless it is submitted to the Registrar for his approval and approved by him. There is yet another provision in section 36 of the Act aforesaid that the approval or disapproval of the Registrar of the resolution of the Society shall be communicated to the Society within a period of three months from the date of such submission and in the absence of such communication, the resolution shall be effective.

9. From the order of the first appellate authority and the revisional authority, I find that a finding of fact has been recorded that non payment of installment by the respondents No.1 members of the Society was not detrimentally affecting it. Section 36 of the Act could have been availed of by the Society to expel a member where his acts were detrimental to the proper working of the Society. The power under section 36 of the Act is subject to the mandatory requirement that the act complained of of the member concerned is detrimental to the proper working of the Society. In the present case, as stated earlier, the authorities below have not found the acts of both the respondents No.1 in these petitions to be detrimental to the proper working of the Society,

and as such, the very initiation of the action of the petitioner-Society for expulsion of those two persons from its membership was illegal and arbitrary.

10. However, there is yet another important aspect of the matter which has been taken care of by the authorities below. On the basis of the evidence which has been brought on the record of the proceedings, the first appellate authority has held that the proceedings of 20th June, 1982 were not carried out as per the provisions of the Act. To reach this conclusion, the first appellate authority has relied upon the affidavit of Shri Makwana who had presided over the said General Meeting of the Body on 20th June, 1982. Shri Makwana has stated on oath before the authority that no resolution for expulsion of member was moved and no voting took place on any resolution. It is true that Shri Makwana resiled from its earlier statement made on oath but the first appellate authority has taken note of this fact and rightly it has not given any value to the second version of Shri Makwana for the reasons stated in the order. This finding of the appellate authority has been confirmed by the revisional authority. After going through the judgment of both the authorities below, I do not find any illegality or procedural irregularity in the orders therein which calls for interference of this Court sitting under Article 226 of the Constitution both on the ground that the act complained of the members were not detrimental to the proper working of the Society as well as the resolution of expulsion of the respondent No.1 members were in fact not carried out.

11. In the result, both these special civil applications fail and the same are dismissed. Rule discharged. The petitioner is directed to pay Rs.2000/as costs of each petition to the respondents No.1 therein.

zgs/-